

APPEAL NO. 030552
FILED APRIL 15, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on November 19, 2002, and February 4, 2003. The hearing officer determined that the respondent (claimant) is entitled to change his treating doctor pursuant to Section 408.022, and that the claimant had disability from September 7 through September 30, 2001, and from April 29, 2002, through the date of the hearing. The appellant (carrier) appealed and the file does not contain a response from the claimant.

DECISION

Affirmed.

On appeal, the carrier asserts that the hearing officer erred in denying its Motion for Deposition by Written Questions of a Texas Workers' Compensation Commission (Commission) benefit review officer (BRO). The carrier asserts that it attended the benefit review conference (BRC) on this matter telephonically from the office of the BRO in question, and that the BRO was present and heard the proceedings on a speaker telephone. It is the carrier's contention that the BRO in question heard what transpired at the BRC, was not acting in her capacity as a BRO at the time of the BRC, and that she is a disinterested third person with actual knowledge to rebut certain answers the claimant gave to interrogatories. We have reviewed the hearing officer's Order on the carrier's motion, and agree with the reasoning contained therein. As such, we find that the hearing officer did not abuse his discretion in denying the carrier's motion and agree with the grounds contained in his Order denying it. As this is an unusual situation, we would caution uninvolved Commission employees, who have no purpose for being present at or involved in a BRC, not to do so in the future so as to avoid any similar problem.

Regarding the change of treating doctor issue, we review that matter on an abuse-of-discretion standard. There is an abuse of discretion when a decision maker reaches a decision without reference to guiding rules or principles, Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986). The hearing officer made factual determinations that the claimant requested a change of treating doctor because the claimant was not receiving appropriate medical care to reach maximum medical improvement; a conflict existed between the claimant and his treating doctor to the extent that the doctor-patient relationship was jeopardized and impaired; and that the claimant did not request to change his treating doctor on order to secure a new impairment rating or medical report. We cannot say that the hearing officer abused his discretion. Likewise, nothing in our review of the record reveals that the hearing officer's determinations on this issue are so contrary to the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. As such, no sound basis exists for us to reverse those determinations on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **LUMBERMENS MUTUAL CASUALTY INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Daniel R. Barry
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Thomas A. Knapp
Appeals Judge